

Pool Transfer Agreement Between
KING COUNTY and MOUNT RAINIER POOL OWNERS

14809

1. PARTIES

This Agreement (hereinafter "Agreement") is made and entered into as of January 1, 2004 between Mount Rainier Pool Owners, a coalition of the cities of Des Moines and Normandy Park, all Washington municipal corporations (hereinafter "Pool Owners"), and King County, a Washington municipal corporation, (hereinafter "the County").

2. PURPOSE AND RECITALS:

- 2.1 The County, under the authority of federal, state and county laws, has acquired and developed a park, recreation and open space system, including ownership of the Mt. Rainier Pool located on Highline School District property at Mt. Rainier High School, 22722 19th Avenue South in Des Moines, Washington;
- 2.2 The County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels and must therefore transfer facilities to other entities.
- 2.3 The County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities.
- 2.4 The Cities of Des Moines and Normandy Park, through an Interlocal Agreement, created a coalition of cities known as "Mount Rainier Pool Owners" ("Pool Owners") for the purposes of owning and operating the Mount Rainier Pool, and said cities have notified the County that it wishes the County to transfer the ownership of the Mt. Rainier Pool to the Pool Owners.
- 2.5 Given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the Pool is approximately equal to the value of the property to the County.
- 2.6 The above cities have further stated their willingness, together with the Highline School District, the City of SeaTac, and other contributors, to provide ongoing funding to the Pool Owners to support the operation of the Mt. Rainier Pool as set forth in the "Interlocal Agreement for Mount Rainier Pool," attached hereto as "Exhibit A."

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

3. CONVEYANCE OF TITLE

- 3.1 Upon execution of this Agreement and of the Assignment ("Assignment") to the Pool Owners by King County of the underlying lease with Highline School District Lease (the Assignment shall be substantially in the form attached hereto as "Exhibit C"), King County shall, by deed effective as of January 1, 2004, convey to the cities of Des Moines and Normandy Park, as tenants in common, all of its ownership interest in the improvements known as the Mt. Rainier Pool ("Pool or "Property"), which are located on the property. (The "Property Legal Description is attached hereto as "Exhibit D" and the King County/Highline School District Lease (the "Lease") is attached hereto as "Exhibit B")
- 3.2 The deed shall be a Statutory Warranty Deed and shall contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The parties agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:
- 3.2.1 "Grantee covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571 applicable to a transferee, including that Grantee covenants that the Property shall continue to be used for the purposes contemplated by Resolution 34571, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County shall be provided."
- 3.2.2 "The Grantee, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County shall be conveyed to the County in exchange therefore."
- 3.2.3 "Grantee covenants that, except for reasonable periods of closure required for necessary maintenance, capital repair or to remedy threats to health or safety, the Property shall be open to the public for swimming during business hours comparable to those of other public pools in King County."
- 3.2.4 "Grantee covenants that it shall maintain the Property in good, clean, safe and sanitary condition and in compliance with all applicable laws, ordinances and regulations."

- 3.2.5 "Grantee covenants that it shall not use the Property in a manner that would cause the interest on County bonds related to the Property to no longer be exempt from federal income taxation."
- 3.2.6 "Grantee further covenants that it will not limit or restrict access to and use of the Property by non-city residents in any way that does not also apply to city residents. The Pool Owners covenant that if differential fees for non-city residents are imposed, they will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Property for parks and recreation purposes."
- 3.2.7 "The Grantee covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property; provided, however, that all such preceding covenants as to Mt. Rainier Pool shall terminate on March 6, 2009, the agreed upon expiration of the term under the Lease or upon the earlier conveyance of the Pool to the District.

4 LEASE ASSIGNMENT

The Assignment of the Lease is contingent on written approval of the Highline School District ("District"). If such written approval is not obtained within thirty (30) days from the execution of this Agreement, the conveyance and assignment shall not be required until thirty (30) days after such written approval is obtained.

5 EQUIPMENT AND SUPPLIES

- 5.1 The Property being conveyed includes certain equipment and supplies used to operate and maintain the Pools as verified by a physical inventory of the equipment and supplies to be conducted by the County and the Pool Owners. The County will leave such equipment and supplies on site, which equipment and supplies will include all furniture, lifeguard equipment, first aid supplies, specialty tools, operator manuals, as-built pool and remodel plans, phone system, lighting fixtures, miscellaneous pool equipment, building maintenance supplies, spare parts, and materials such as chlorine and filtration supplies for pool maintenance, as further described in "Exhibit E" hereto.
- 5.2 The Pool Owners take all equipment and supplies AS IS and WHERE IS and agree that the County holds no future responsibility with regard to the equipment and supplies or any occurrence related to or resulting from their use.

6 BEST EFFORTS AND CONTINGENCY AGREEMENT

- 6.1 The Pool Owners have agreed to accept transfer of the pool ownership and assignment of the lease on the following conditions:

- 6.1.1 The Pool Owners will use their best efforts, with the cooperation and assistance of the cities and communities that will be served by the pool, to operate and maintain the pool at its current level of service to the public;
- 6.1.2 The Pool Owners may, at any time, certify to the County in writing that: (1) they have used all reasonable and diligent efforts to continue to operate the Pool and to secure financial support therefor; (2) funds are not reasonably available to allow the continued operation of the Pool by the Pool Owners; and (3) The Pool Owners have been unable to assign their interests in the Pool to another operator or otherwise ensure the continued operation of the Pool as a public pool. Thereafter, 90 days after such written certification to the District and the County in accordance with the Pool Transfer and Assignment Agreements, the Pool Owners may then elect, consistent with applicable legal requirements and the Assignment, to have title to the Pool revert to King County.

7 NEW POOL CONTINGENCY

- 7.1 It is understood that one or more of the cities and/or school district that are providing operating funds to the Pool Owners for Pool operations, or another entity such as the YMCA, may construct a new pool in the future in the general vicinity of the Pool. If such new pool: a) operates as a replacement pool in the same manner as required for the Pool by this Agreement; b) is of comparable size and equivalent recreational value; and c) the cities and/or the district fund the new pool in lieu of providing continued funding levels to the Pool Owners, the new pool shall constitute an equivalent replacement facility for the Pool as contemplated by Resolution 34571. When the funding is withdrawn from the Pool Owners and the new pool is operational and open to the public, then as between the County and the Pool Owners, the County will deem a closure of the Pool to be in compliance with the Pool Owners' obligations to continue operating the pool under this Agreement. Upon such closure, ownership of the Pool shall revert to the District in accordance with the Assignment.
- 7.2 The Pool Owners agree to continue to maintain and operate the Pool in accordance with this Agreement until the MRPC discontinues funding levels to the Pool Owners and the new replacement pool is operational and open to the public.

8 EXISTING RESTRICTIONS, AGREEMENTS, CONTRACTS OR PERMITS

- 8.1 The Pool Owners shall abide by and enforce all terms, conditions, reservations, encumbrances, restrictions and covenants of title existing at the time of conveyance and/or in the deed of conveyance.
- 8.2 In addition to any other remedies available for breach of a real property covenant and regardless of the enforceability of the covenants in the deed, all such covenants

shall also be considered contractual obligations with which the Pool Owners must comply.

- 8.3 Breach of any such covenant or contractual obligation or breach of any provision of this Agreement shall entitle the County to seek any remedy in law or equity, including without limitation, damages and/or specific performance.

9 FINANCIAL ARRANGEMENT

- 9.1 As part of the consideration for the Pool Owners' agreement to assume title to and to continue to operate and maintain the Pool at its expense, the County agrees to:

9.1.1 Transfer \$50,000.00 to the Pool Owners for the purpose of making capital improvements to the Mt. Rainier Pool. Such funds for capital improvements will be distributed to the Pool Owners by March 31, 2004. Funds provided pursuant to this financial arrangement may be used only for the planning, construction, reconstruction, repair, rehabilitation or improvement of the Mt. Rainier Pool. Any such funds not so used shall be returned to the County, or transferred subject to the requirement that the transferee use the funds only for the specified purposes; and

9.1.2 Transfer additional capital funds to the Pool Owners for the purposes of making capital improvements to the Pool. The amount of such additional capital funds will be determined by the County and will depend on the number of agreements to transfer pools that are executed in 2002-2003. Any additional capital dollars will be distributed to the Pool Owners by December 31, 2004. Under no circumstance will the amount of additional capital funds to be transferred to the Pool Owners exceed Ten Thousand (\$10,000.00) Dollars.

- 9.2 Other than the funds provided pursuant to 9.1.1 and 9.1.2, the County shall have no obligation whatsoever to provide additional funds to the Pool Owners relating to the Pool Property.

10 CONDITION OF PREMISES, OPERATIONS, MAINTENANCE, ETC.

- 10.1 The Pool Owners have inspected and know the condition of the Pool and agree to accept the Property in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Pool.
- 10.2 The County does not make and specifically disclaims any and all warranties, express or implied, including any warranty of merchantability or fitness for a

particular purpose, with respect to the Property or its condition, and no official, employee, representative or agent of King County is authorized otherwise.

10.3 The Pool Owners acknowledge and agree that, except as set forth in this Agreement, the County shall have no liability for, and that the Pool Owners shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the Pool Owners or the County.

10.4 The County shall make available, prior to December 18, 2003, to the Pool Owners' representatives for interviews, the Pool Operators of the Pool and the employees of the County who manage and supervise those Pool Operators. The County shall instruct all such employees to fully cooperate with the Pool Owners' representatives and to truthfully and completely answer all questions presented as they relate to the operations of the Pool and the condition of the Pool equipment, property, furnishings, fixtures and assets. The County shall make the Pool available for inspection by independent experts engaged at the Pool Owners' expense to inspect the Pool.

11 ENVIRONMENTAL LIABILITY

11.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

11.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the Pool Owners might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County prior to transfer of the Pool to the Pool Owners. In making such claim, however, the Pool Owners are barred from seeking recovery for costs that arise from the Pool Owners having exacerbated the costs of remediation upon which a statutory claim for contribution is based as a result of the Pool Owners performing construction activities on the Property or changing the use of the Property. Exacerbation shall not be deemed to include the mere discovery of contamination.

11.3 If the Pool Owners discover the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Prior to undertaking any remediation, the parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement.

11.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

12 INDEMNIFICATION AND HOLD HARMLESS

- 12.1 King County shall indemnify and hold the Pool Owners harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the Pool Owners, except to the extent that indemnifying or holding the Pool Owners harmless would be limited by Section 10 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the Pool Owners or the Pool Owners and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the Pool Owners and their officials, officers, agents and employees or jointly against the Pool Owners and King County and their respective officials, officers, agents and employees, King County shall satisfy the same.
- 12.2 The Pool Owners shall indemnify and hold King County and its elected officials, officers, agents and employees, or any of them, harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, including attorneys' fees and costs, (i) arising from the Pool Owners' failure to comply with any provision of this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to the Pool Owners, except to the extent that indemnifying or holding the County harmless would be limited by Section 11 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the Pool Owners, the Pool Owners shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the Pool Owners and their respective officers, agents and employees, the Pool Owners shall satisfy the same.
- 12.3 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Property.
- 12.4 Each party agrees that its obligations under this paragraph extend to any claim brought by or on behalf of any employees, or agents. For this purpose, each party hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.
- 12.5 The County shall defend any claim against the Pool Owners or the County that it was unlawful for the County to transfer the Pool to the Pool Owners pursuant to this Agreement. This defense obligation shall not be construed as a promise to indemnify the Pool Owners from and against any damages or costs, nor as an obligation to

defend any other claims including, but not limited to, those alleging that the Pool Owners unlawfully discontinued operations, closed or mothballed the Pool.

13 AUDITS AND INSPECTIONS

13.1 The County shall have full access to and the right to examine and copy, at its expense, during normal business hours and as often as they deem necessary, all of the Pool Owners' records with respect to all matters covered by this Agreement.

13.2 The Pool Owners shall have access to and the right to examine and copy, at its expense, during normal business hours, any disclosable and non-privileged records retained by the County with respect to the construction, maintenance, use, repair, and/or operation of the Pool.

14 COMPLIANCE WITH LAWS

The Pool Owners shall comply, and shall ensure that its contractors comply, with all federal, state and local laws, regulations, and ordinances applicable to the Property.

15. LEGAL RELATIONS

15.1 This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture, agent-principal relationship, or partnership is formed as a result of this Agreement.

15.2 This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

16 WAIVER

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

17. ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement and its Exhibits set forth the entire agreement between the parties with respect to the subject matter hereof. It may only be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

18. MISCELLANEOUS

18.1 The Pool Owners represent and warrant that the execution of this Agreement has been duly authorized and that to the best of the Pool Owners' knowledge there is no pending, lawsuit or material claim against or related to the Pool Owners that will impede or materially affect the Pool Owners' ability to perform the terms of this Agreement, this Agreement does not conflict with the terms of any other agreement to which the Pool Owners are a party, and there is no pending investigation of the Pool Owners by any governmental agency.

18.2 The County represents and warrants that the execution of this Agreement has been duly authorized and that to the best of the County's knowledge there is no pending, lawsuit or material claim against or related to the County that will impede or materially affect the County's ability to perform the terms of this Agreement, this Agreement does not conflict with the terms of any other agreement to which the County is a party.

18.3 This Agreement shall be effective upon its execution by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination.

19. NOTICES

19.1 Any notice provided for herein shall be sent to the respective parties at:

KING COUNTY:

POOL OWNERS:

Shelley Marelli, Acting Manager
King County Parks and Recreation Division
Dept. of Natural Resources & Parks
King Street Center, 7th Floor
201 S. Jackson St.
Seattle, WA 98104
(Telephone)

Patrice Thorell
Parks & Recreation Director
Parks & Recreation Director
City of Des Moines
21630 11th Ave. S.
Des Moines WA 98198
(206) 870-6529

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IN WITNESS WHEREOF, the parties have executed this Agreement.

KING COUNTY

MOUNT RAINER POOL OWNERS
("POOL OWNERS")

King County Executive
Manager _____
Date _____

APPROVED AS TO FORM this _____
day of _____, 2003.

By _____
Richard S. Brown
Assistant City Attorney of Des Moines

APPROVED AS TO FORM this _____
day of _____, 2003.

By _____
Susan Sampson
City Attorney of Normandy Park

CEO
_____ Date _____

DATED this _____ day of
_____, 2003.

CITY OF DES MOINES
By _____
Anthony Piasecki

Its City Manager
At the direction of the Des Moines City
Council by motion regularly passed at an
open public meeting on _____, 2003.

DATED this _____ day of
_____, 2003.

CITY OF NORMANDY PARK
By _____
Merlin MacReynold

Its City Manager
At the direction of the Normandy Park City
Council by motion regularly passed at an
open public meeting on _____, 2003.

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STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tony Piasecki, to me known to be the person who signed as City Manager of the CITY OF DESMOINES, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Merlin MacReynold, to me known to be the person who signed as City Manager of the CITY OF NORMANDY PARK, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of KING COUNTY, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of the municipal corporation, that _____ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

EXHIBIT A TO ATTACHMENT A

INTERLOCAL AGREEMENT for MOUNT RAINIER POOL

For Years 2004 through 2006

By

MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")

And

MOUNT RAINIER POOL OWNERS ("POOL OWNERS")

In Accordance with the Interlocal Cooperation Act (RCW 39.34), the City of Des Moines ("Des Moines"), the City of Normandy Park ("Normandy Park"), the City of SeaTac ("SeaTac"), and the Highline School District No. 401 ("the District") [Collectively referred to hereafter as the "Parties"], each of which is a Washington Municipal Corporation, hereby enter into the following AGREEMENT:

RECITALS

WHEREAS:

- A. King County ("the County"), as part of its duty to serve the needs of the residents of King County and the municipalities within it, from 1974 through 2002, owned, operated and maintained the Mount Rainier Swimming Pool ("the Pool") located on property leased to the County by the District;
- B. In 2002, the County reported that it did not have a sufficient source of revenue to continue to manage, maintain and operate the Pool and related programs beyond the 2002 calendar year;
- C. In December 2002, as part of a joint effort to assure the continued operation of the Pool through the 2003 calendar year, the Parties entered into an "Interlocal Agreement for Mount Rainier Pool Subsidy Funding." Said agreement created the coalition of "Mt. Rainier Pool Contributors" ("MRPC"), consisting of all of the Parties.
- D. MRPC then contracted with the County to continue operation of the Pool through the 2003 calendar year. The County has now reported that it will not continue operating the Pool, even with subsidy funding, beyond the 2003 calendar year.
- E. The County has agreed to transfer pool ownership and to assign its lease with the District to an ownership coalition consisting of the cities of Des Moines, Normandy Park and SeaTac [to be known as the "Mt. Rainier Pool Owners" ("Pool Owners")] and the District has agreed to such an assignment. The transfer and assignment will be substantially in the form attached hereto as "Exhibit A."

F. Upon execution and finalization of this agreement, the Pool Owners intend to enter into a Pool Operation Agreement with Aquatic Management Group ("AMG"), substantially in the form attached hereto as "Exhibit B."

NOW, THEREFORE, the Parties agree to cooperate with each other by continuing the coalition of **MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")** and by creating a coalition of **MOUNT RAINIER POOL OWNERS ("Pool Owners")** to carry out the above purposes on the following terms and conditions:

I. TERM of AGREEMENT and RENEWAL

1.1 This Agreement shall commence on January 1, 2004 and shall terminate on December 31, 2006; provided, however, that if the Pool Operation Agreement with AMG is not fully executed and effective as of January 1, 2004, this Agreement shall automatically terminate and be of no further force or effect.

1.2 This Agreement may be renewed only by written agreement of all of the Parties.

II. CONTINUATION OF MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")

2.1 The coalition of **MOUNT RAINIER POOL CONTRIBUTORS ("MRPC")**, created by the Interlocal Agreement in 2002, is hereby continued to carry out the purposes set forth in this Agreement.

2.2 The initial members of MRPC will continue to be members of the continuing MRPC coalition.

2.3 The MRPC members will contribute funds to be used to continue the operation, management and maintenance of the Pool as more fully described herein and in the Pool Operation Agreement with AMG.

2.4 MRPC shall not be considered an owner or operator of the Pool.

III. MRPC ELIGIBILITY

3.1 Any public agency seeking to participate in this Agreement may be allowed to do so upon approval of the MRPC Executive Committee (as defined below) pursuant to the existing terms hereof and upon such other terms, including payment of such financial contributions, as may be approved and directed by the MRPC Executive Committee.

3.2 The MRPC Executive Committee, by unanimous vote, may allow admission by a public agency on terms other than those set forth herein for participation. Any public agency so

admitted shall be deemed an ex officio party hereto and shall not be entitled to a vote on matters submitted to the MRPC Executive Committee.

IV. MRPC EXECUTIVE COMMITTEE

4.1 The MRPC shall be governed by the "MRPC Executive Committee", which is hereby established to assure the effective implementation and administration of this Agreement.

4.2 The MRPC Executive Committee shall be composed of the chief executive officer or designee of each of the Parties.

4.3 Each MRPC member shall also designate an alternate voting member of the MRPC Executive Committee who shall serve in the absence of the voting member.

4.4 The MRPC Executive Committee shall, by majority vote, except as herein otherwise provided, develop and implement operating policy in order to carry out the goals set forth herein, adopt and administer a budget, receive funding from the Parties for such budget, and seek such outside professional assistance as is necessary to achieve the purposes set forth herein. The funds of MRPC shall be subject to audit in the manner provided by the law for the auditing of public funds.

4.5 Regular meetings of the MRPC Executive Committee shall be held as determined by the MRPC Executive Committee. The MRPC Executive Committee shall elect, by majority vote, a "chair" to conduct its meetings. The chair shall not forfeit, by virtue of the position of chair, any power vested in him/her and in addition will schedule and preside over meetings. The chair shall continue to preside at the pleasure of a majority of the voting members of the MRPC Executive Committee, and may be replaced at any time.

4.6 A quorum for the conduct of business by the MRPC Executive Committee shall be a majority. Notice of any special meeting shall be circulated to all members of the MRPC Executive Committee by the chair, or upon the written notice of a voting majority of the MRPC Executive Committee, not less than twenty-four (24) hours before such meeting is scheduled. No action will be taken without a quorum and without an absolute majority of the eligible voting members of the MRPC Executive Committee voting in favor of the matter under consideration. MRPC Executive Committee members may attend meetings and vote telephonically as may be necessary for the orderly and timely conduct of business.

4.7 On or before August 15, of each year of the agreement the MRPC Executive Committee shall, in conjunction with the Pool Owners Executive Committee:

- Analyze all significant and relevant information and resources relating to the expenditures and revenues associated with the operation and capital maintenance of the Pool;
- Report its findings to the legislative bodies of the MRPC members; and
- Recommend a course of action to the MRPC members for the continuing operation and maintenance of the Pool.

V. FUNDING and CONTRIBUTIONS

5.1 Funding to subsidize the Pool operation and carry out the purposes of this Agreement shall be provided by contributions from the MRPC members and by such other contributions as may be received by the MRPC and fund raising activities as may be approved by the MRPC Executive Committee. AMG has estimated the annual subsidy necessary to operate the Pool to be \$97,000 per year.

5.2 Based on the estimated first year subsidy of \$97,000 and a start up contribution of \$50,000, the financial contribution to be paid by each of the Parties for the 2004 calendar year is:

Des Moines	\$ 75,000
Highline School District	\$ 20,000
Normandy Park	\$ 15,000
SeaTac	\$ 25,000
Total 2004 Contribution	\$ 135,000

5.3 Based on the estimated second year subsidy of \$97,000, the financial contribution to be paid by each of the Parties for the 2005 calendar year is:

Des Moines	\$ 75,000
Highline School District	\$ 20,000
Normandy Park	\$ 15,000
SeaTac	\$ 25,000
Total 2005 Contribution	\$ 135,000
Projected Transfer to Capital Account	\$ 26,000

5.4 Based on the estimated third year subsidy of \$97,000, the financial contribution to be paid by each of the Parties for the 2006 calendar year is:

Des Moines	\$ 75,000
Highline School District	\$ 20,000
Normandy Park	\$ 15,000
SeaTac	\$ 25,000
Total 2006 Contribution	\$ 135,000
Projected Transfer to Capital Account	\$ 38,000

5.5 Capital Expenditure Account. The Pool Owners shall establish a Mt. Rainier Pool Escrow Account with funds transferred from King County. The funds from the escrow account shall be used for capital expenditures for the Pool. The expenditure of County funds for capital

items must qualify for the use of Real Estate Excise Tax (REET) funds and projects must be of an amount of \$5,000 or greater. The Pool Owners may, at any time and at their sole discretion and expense, make any and all improvements to or repairs, maintenance and/or modifications of the premises, or any of the areas assigned to AMG in the Operating Agreement, which it deems necessary or desirable to protect or serve pool users, or which enhance the pool, however the Pool Owners shall not be obligated to make any improvement or modifications of the premises.

5.6 Any and all unexpended funds remaining as a result of reduced subsidy required by AMG as identified in 5.2 (no funds projected for transfer in 2004), 5.3 (\$26,000 funds projected for transfer in 2005), and 5.4 (\$38,000 funds projected for transfer in 2006) shall be transferred to the Capital Expenditure Account to be used by the Pool Owners for Capital Pool needs exceeding \$2,000 through the term of the Agreement.

VI. ACCOUNTING, PAYMENTS & DISTRIBUTIONS; DESIGNATION OF AUTHORITY

6.1 The MRPC Fund will be established and managed by Des Moines.

6.2 Des Moines will transmit billings for the annual financial contributions to the MRPC members no later than December 15 in 2003, 2004 and 2005. Within 30 days after receipt of the billing, MRPC members shall pay the amount billed to Des Moines at 21630 11th Avenue South, Des Moines WA 98198, Attn: Finance Director, or at such other address as may be directed by Des Moines.

6.3 Des Moines shall thereafter, on behalf of the MRPC, transmit the funds to AMG in accordance with the Pool Operation Agreement.

6.4 Any funds provided to the MRPC by other public agencies or by private or non-profit fundraising, in excess of budgeted funding required to operate and maintain the Pool throughout the term of this Agreement, shall be redistributed to the MRPC members to reduce member financial contributions proportionately.

6.5 On February 15 following each contract year, Des Moines will prepare an annual reconciliation of the MRPC Fund actual net operating costs. Upon termination of the Agreement, Des Moines will distribute to each MRPC member their proportional share of any funds remaining in the MRPC Fund.

VII. CREATION OF MOUNT RAINIER POOL OWNERS ("POOL OWNERS")

7.1 The coalition of **MOUNT RAINIER POOL OWNERS ("POOL OWNERS")**, consisting of the cities of Des Moines and Normandy Park, is hereby created and shall be considered owner of the Pool for the term of this Agreement.

7.2 It is intended that AMG, or a qualified successor approved by POOL OWNERS, will be the sole operator of the Pool for the term of the Agreement.

VIII. POOL OWNERS EXECUTIVE COMMITTEE

8.1 The Pool Owners shall be governed by the "Pool Owners Executive Committee", which is hereby established to assure the effective implementation and administration of this Agreement.

8.2 The Pool Owners Executive Committee shall be composed of the chief executive officer or designee of each of the member cities of the Pool Owners.

8.3 Each Pool Owners member city shall also designate an alternate voting member of the Pool Owners Executive Committee who shall serve in the absence of the voting member.

8.4 The Pool Owners Executive Committee shall, by majority vote, except as herein otherwise provided, develop and implement operating policy in order to carry out the goals set forth herein, adopt and administer a budget, receive funding from the Parties for such budget, and seek such outside professional assistance as is necessary to achieve the purposes set forth herein. The funds of the Pool Owners shall be subject to audit in the manner provided by the law for the auditing of public funds.

8.5 Regular meetings of the Pool Owners Executive Committee shall be held as determined by the Pool Owners Executive Committee. The Pool Owners Executive Committee shall elect, by majority vote, a "chair" to conduct its meetings. The chair shall not forfeit, by virtue of the position of chair, any power vested in him/her and in addition will schedule and preside over meetings. The chair shall continue to preside at the pleasure of a majority of the voting members of the Pool Owners Executive Committee, and may be replaced at any time.

8.6 A quorum for the conduct of business by the Pool Owners Executive Committee shall be a majority. Notice of any special meeting shall be circulated to all members of the Pool Owners Executive Committee by the chair, or upon the written notice of a voting majority of the Pool Owners Executive Committee, not less than twenty-four (24) hours before such meeting is scheduled. No action will be taken without a quorum and without an absolute majority of the eligible voting members of the Pool Owners Executive Committee voting in favor of the matter under consideration. The Pool Owners Executive Committee members may attend meetings and vote telephonically as may be necessary for the orderly and timely conduct of business.

8.7 On or before August 15, of each year the Pool Owners Executive Committee, in conjunction with the MRPC Executive Committee, shall:

- Analyze all significant and relevant information and resources relating to the expenditures and revenues associated with the operation and capital maintenance of the Pool;
- Report its findings to the legislative bodies of the Pool Owners members; and

- Recommend a course of action to the Pool Owners members for the continuing operation and maintenance of the Pool.

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IX. MISCELLANEOUS PROVISIONS

- 9.1 Effective Date. This Agreement shall be effective upon ratification by resolution or motion of the governing body and execution by the Chief Executive Officer of each of the Parties.
- 9.2 Amendment. This Agreement may be amended only upon consent of all Parties hereto. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.
- 9.3 Waiver. The waiver by any party of any breach of any term, covenant, or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same term, covenant, or condition of this Agreement.
- 9.4 Grants, Gifts, Etc. All Parties to this Agreement shall cooperate and assist each other in procuring scholarships, grants or financial assistance from the United States, the State of Washington, and private benefactors for the reduction of MRPC subsidy payments made to AMG for its continued operation, management and maintenance of the Pool and programs.
- 9.5 Severability. If any provision of this Agreement shall be held invalid, the remainder shall not be affected thereby.
- 9.6 Entire Agreement. This Agreement and exhibits represent the entire understanding of the Parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.
- 9.7 Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.
- 9.8 Notices. Except as otherwise provided herein, any notice required by this Agreement shall be delivered by certified mail, return receipt requested, or by personal service.

EXECUTED and APPROVED by the Parties in identical counterparts of this Agreement, each of which shall be deemed an original hereof, on the dates set forth below.

14809

APPROVED AS TO FORM this _____
day of _____, 2003.

By _____
Richard S. Brown
Assistant City Attorney of Des Moines

DATED this _____ day of _____, 2003.

CITY OF DES MOINES

By _____
Anthony Piasecki
Its City Manager
At the direction of the Des Moines City
Council by motion regularly passed at an
open public meeting on _____, 2003.

APPROVED AS TO FORM this _____
day of _____, 2003.

By _____
Susan Sampson
City Attorney of Normandy Park

DATED this _____ day of _____, 2003.

CITY OF NORMANDY PARK

By _____
Merlin MacReynold
Its City Manager
At the direction of the Normandy Park City
Council by motion regularly passed at an
open public meeting on _____, 2003.

APPROVED AS TO FORM this _____
day of _____, 2003.

By _____
Robert L. McAdams
City Attorney of SeaTac

DATED this _____ day of _____, 2003.

CITY OF SEATAC

By _____
Bruce Rayburn
Its City Manager
At the direction of the SeaTac City Council
by motion regularly passed at an open public
meeting on _____, 2003.

APPROVED AS TO FORM this _____
day of _____, 2003.

DATED this _____ day of
_____, 2003.

HIGHLINE SCHOOL DISTRICT No. 401

By _____
William Green
Attorney for Highline School District

By _____
Dr. Joseph McGeehan
Its Superintendent
At the direction of the Highline School
Board by resolution regularly passed at an
open public meeting on _____, 2003.

**Pool Transfer Agreement Between
KING COUNTY and MOUNT RAINIER POOL OWNERS**

14809

1. PARTIES

This **Agreement** (hereinafter "Agreement") is made and entered into as of January 1, 2004 between **Mount Rainier Pool Owners**, a coalition of the cities of Des Moines and Normandy Park, all Washington municipal corporations (hereinafter "**Pool Owners**"), and **King County**, a Washington municipal corporation, (hereinafter "**the County**").

2. PURPOSE AND RECITALS:

- 2.1 The County, under the authority of federal, state and county laws, has acquired and developed a park, recreation and open space system, including ownership of the Mt. Rainier Pool located on Highline School District property at Mt. Rainier High School, 22722 19th Avenue South in Des Moines, Washington;
- 2.2 The County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels and must therefore transfer facilities to other entities.
- 2.3 The County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities.
- 2.4 The Cities of Des Moines and Normandy Park, through an Interlocal Agreement, created a coalition of cities known as "Mount Rainier Pool Owners" ("Pool Owners") for the purposes of owning and operating the Mount Rainier Pool, and said cities have notified the County that it wishes the County to transfer the ownership of the Mt. Rainier Pool to the Pool Owners.
- 2.5 Given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the Pool is approximately equal to the value of the property to the County.
- 2.6 The above cities have further stated their willingness, together with the Highline School District, the City of SeaTac, and other contributors, to provide ongoing funding to the Pool Owners to support the operation of the Mt. Rainier Pool as set forth in the "Interlocal Agreement for Mount Rainier Pool," attached hereto as "Exhibit A."

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

3. CONVEYANCE OF TITLE

- 3.1 Upon execution of this Agreement and of the Assignment ("Assignment") to the Pool Owners by King County of the underlying lease with Highline School District Lease (the Assignment shall be substantially in the form attached hereto as "Exhibit C"), King County shall, by deed effective as of January 1, 2004, convey to the cities of Des Moines and Normandy Park, as tenants in common, all of its ownership interest in the improvements known as the Mt. Rainier Pool ("Pool or "Property"), which are located on the property. (The "Property Legal Description is attached hereto as "Exhibit D" and the King County/Highline School District Lease (the "Lease") is attached hereto as "Exhibit B")
- 3.2 The deed shall be a Statutory Warranty Deed and shall contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The parties agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:
- 3.2.1 "Grantee covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571 applicable to a transferee, including that Grantee covenants that the Property shall continue to be used for the purposes contemplated by Resolution 34571, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County shall be provided."
- 3.2.2 "The Grantee, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County shall be conveyed to the County in exchange therefore."
- 3.2.3 "Grantee covenants that, except for reasonable periods of closure required for necessary maintenance, capital repair or to remedy threats to health or safety, the Property shall be open to the public for swimming during business hours comparable to those of other public pools in King County."
- 3.2.4 "Grantee covenants that it shall maintain the Property in good, clean, safe and sanitary condition and in compliance with all applicable laws, ordinances and regulations."

- 3.2.5 "Grantee covenants that it shall not use the Property in a manner that would cause the interest on County bonds related to the Property to no longer be exempt from federal income taxation."
- 3.2.6 "Grantee further covenants that it will not limit or restrict access to and use of the Property by non-city residents in any way that does not also apply to city residents. The Pool Owners covenant that if differential fees for non-city residents are imposed, they will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Property for parks and recreation purposes."
- 3.2.7 "The Grantee covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property; provided, however, that all such preceding covenants as to Mt. Rainier Pool shall terminate on March 6, 2009, the agreed upon expiration of the term under the Lease or upon the earlier conveyance of the Pool to the District.

4 LEASE ASSIGNMENT

The Assignment of the Lease is contingent on written approval of the Highline School District ("District"). If such written approval is not obtained within thirty (30) days from the execution of this Agreement, the conveyance and assignment shall not be required until thirty (30) days after such written approval is obtained.

5 EQUIPMENT AND SUPPLIES

- 5.1 The Property being conveyed includes certain equipment and supplies used to operate and maintain the Pools as verified by a physical inventory of the equipment and supplies to be conducted by the County and the Pool Owners. The County will leave such equipment and supplies on site, which equipment and supplies will include all furniture, lifeguard equipment, first aid supplies, specialty tools, operator manuals, as-built pool and remodel plans, phone system, lighting fixtures, miscellaneous pool equipment, building maintenance supplies, spare parts, and materials such as chlorine and filtration supplies for pool maintenance, as further described in "Exhibit E" hereto.
- 5.2 The Pool Owners take all equipment and supplies AS IS and WHERE IS and agree that the County holds no future responsibility with regard to the equipment and supplies or any occurrence related to or resulting from their use.

6 BEST EFFORTS AND CONTINGENCY AGREEMENT

- 6.1 The Pool Owners have agreed to accept transfer of the pool ownership and assignment of the lease on the following conditions:

- 6.1.1 The Pool Owners will use their best efforts, with the cooperation and assistance of the cities and communities that will be served by the pool, to operate and maintain the pool at its current level of service to the public;
- 6.1.2 The Pool Owners may, at any time, certify to the County in writing that: (1) they have used all reasonable and diligent efforts to continue to operate the Pool and to secure financial support therefor; (2) funds are not reasonably available to allow the continued operation of the Pool by the Pool Owners; and (3) The Pool Owners have been unable to assign their interests in the Pool to another operator or otherwise ensure the continued operation of the Pool as a public pool. Thereafter, 90 days after such written certification to the District and the County in accordance with the Pool Transfer and Assignment Agreements, the Pool Owners may then elect, consistent with applicable legal requirements and the Assignment, to have title to the Pool revert to King County.

7 NEW POOL CONTINGENCY

- 7.1 It is understood that one or more of the cities and/or school district that are providing operating funds to the Pool Owners for Pool operations, or another entity such as the YMCA, may construct a new pool in the future in the general vicinity of the Pool. If such new pool: a) operates as a replacement pool in the same manner as required for the Pool by this Agreement; b) is of comparable size and equivalent recreational value; and c) the cities and/or the district fund the new pool in lieu of providing continued funding levels to the Pool Owners, the new pool shall constitute an equivalent replacement facility for the Pool as contemplated by Resolution 34571. When the funding is withdrawn from the Pool Owners and the new pool is operational and open to the public, then as between the County and the Pool Owners, the County will deem a closure of the Pool to be in compliance with the Pool Owners' obligations to continue operating the pool under this Agreement. Upon such closure, ownership of the Pool shall revert to the District in accordance with the Assignment.
- 7.2 The Pool Owners agree to continue to maintain and operate the Pool in accordance with this Agreement until the MRPC discontinues funding levels to the Pool Owners and the new replacement pool is operational and open to the public.

8 EXISTING RESTRICTIONS, AGREEMENTS, CONTRACTS OR PERMITS

- 8.1 The Pool Owners shall abide by and enforce all terms, conditions, reservations, encumbrances, restrictions and covenants of title existing at the time of conveyance and/or in the deed of conveyance.
- 8.2 In addition to any other remedies available for breach of a real property covenant and regardless of the enforceability of the covenants in the deed, all such covenants

shall also be considered contractual obligations with which the Pool Owners must comply.

- 8.3 Breach of any such covenant or contractual obligation or breach of any provision of this Agreement shall entitle the County to seek any remedy in law or equity, including without limitation, damages and/or specific performance.

9 FINANCIAL ARRANGEMENT

- 9.1 As part of the consideration for the Pool Owners' agreement to assume title to and to continue to operate and maintain the Pool at its expense, the County agrees to:

- 9.1.1 Transfer \$50,000.00 to the Pool Owners for the purpose of making capital improvements to the Mt. Rainier Pool. Such funds for capital improvements will be distributed to the Pool Owners by March 31, 2004. Funds provided pursuant to this financial arrangement may be used only for the planning, construction, reconstruction, repair, rehabilitation or improvement of the Mt. Rainier Pool. Any such funds not so used shall be returned to the County, or transferred subject to the requirement that the transferee use the funds only for the specified purposes; and

- 9.1.2 Transfer additional capital funds to the Pool Owners for the purposes of making capital improvements to the Pool. The amount of such additional capital funds will be determined by the County and will depend on the number of agreements to transfer pools that are executed in 2002-2003. Any additional capital dollars will be distributed to the Pool Owners by December 31, 2004. Under no circumstance will the amount of additional capital funds to be transferred to the Pool Owners exceed Ten Thousand (\$10,000.00) Dollars.

- 9.2 Other than the funds provided pursuant to 9.1.1 and 9.1.2, the County shall have no obligation whatsoever to provide additional funds to the Pool Owners relating to the Pool Property.

10 CONDITION OF PREMISES, OPERATIONS, MAINTENANCE, ETC.

- 10.1 The Pool Owners have inspected and know the condition of the Pool and agree to accept the Property in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Pool.

- 10.2 The County does not make and specifically disclaims any and all warranties, express or implied, including any warranty of merchantability or fitness for a

particular purpose, with respect to the Property or its condition, and no official, employee, representative or agent of King County is authorized otherwise.

- 10.3 The Pool Owners acknowledge and agree that, except as set forth in this Agreement, the County shall have no liability for, and that the Pool Owners shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the Pool Owners or the County.
- 10.4 The County shall make available, prior to December 18, 2003, to the Pool Owners' representatives for interviews, the Pool Operators of the Pool and the employees of the County who manage and supervise those Pool Operators. The County shall instruct all such employees to fully cooperate with the Pool Owners' representatives and to truthfully and completely answer all questions presented as they relate to the operations of the Pool and the condition of the Pool equipment, property, furnishings, fixtures and assets. The County shall make the Pool available for inspection by independent experts engaged at the Pool Owners' expense to inspect the Pool.

11 ENVIRONMENTAL LIABILITY

- 11.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 11.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the Pool Owners might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County prior to transfer of the Pool to the Pool Owners. In making such claim, however, the Pool Owners are barred from seeking recovery for costs that arise from the Pool Owners having exacerbated the costs of remediation upon which a statutory claim for contribution is based as a result of the Pool Owners performing construction activities on the Property or changing the use of the Property. Exacerbation shall not be deemed to include the mere discovery of contamination.
- 11.3 If the Pool Owners discover the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Prior to undertaking any remediation, the parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement.
- 11.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

12 INDEMNIFICATION AND HOLD HARMLESS

- 12.1 King County shall indemnify and hold the Pool Owners harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the Pool Owners, except to the extent that indemnifying or holding the Pool Owners harmless would be limited by Section 10 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the Pool Owners or the Pool Owners and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the Pool Owners and their officials, officers, agents and employees or jointly against the Pool Owners and King County and their respective officials, officers, agents and employees, King County shall satisfy the same.
- 12.2 The Pool Owners shall indemnify and hold King County and its elected officials, officers, agents and employees, or any of them, harmless from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, including attorneys' fees and costs, (i) arising from the Pool Owners' failure to comply with any provision of this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to the Pool Owners, except to the extent that indemnifying or holding the County harmless would be limited by Section 11 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the Pool Owners, the Pool Owners shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the Pool Owners and their respective officers, agents and employees, the Pool Owners shall satisfy the same.
- 12.3 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Property.
- 12.4 Each party agrees that its obligations under this paragraph extend to any claim brought by or on behalf of any employees, or agents. For this purpose, each party hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.
- 12.5 The County shall defend any claim against the Pool Owners or the County that it was unlawful for the County to transfer the Pool to the Pool Owners pursuant to this Agreement. This defense obligation shall not be construed as a promise to indemnify the Pool Owners from and against any damages or costs, nor as an obligation to

defend any other claims including, but not limited to, those alleging that the Pool Owners unlawfully discontinued operations, closed or mothballed the Pool.

13 AUDITS AND INSPECTIONS

13.1 The County shall have full access to and the right to examine and copy, at its expense, during normal business hours and as often as they deem necessary, all of the Pool Owners' records with respect to all matters covered by this Agreement.

13.2 The Pool Owners shall have access to and the right to examine and copy, at its expense, during normal business hours, any disclosable and non-privileged records retained by the County with respect to the construction, maintenance, use, repair, and/or operation of the Pool.

14 COMPLIANCE WITH LAWS

The Pool Owners shall comply, and shall ensure that its contractors comply, with all federal, state and local laws, regulations, and ordinances applicable to the Property.

15. LEGAL RELATIONS

15.1 This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture, agent-principal relationship, or partnership is formed as a result of this Agreement.

15.2 This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

16 WAIVER

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

17. ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement and its Exhibits set forth the entire agreement between the parties with respect to the subject matter hereof. It may only be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

18. MISCELLANEOUS

18.1 The Pool Owners represent and warrant that the execution of this Agreement has been duly authorized and that to the best of the Pool Owners' knowledge there is no pending, lawsuit or material claim against or related to the Pool Owners that will impede or materially affect the Pool Owners' ability to perform the terms of this Agreement, this Agreement does not conflict with the terms of any other agreement to which the Pool Owners are a party, and there is no pending investigation of the Pool Owners by any governmental agency.

18.2 The County represents and warrants that the execution of this Agreement has been duly authorized and that to the best of the County's knowledge there is no pending, lawsuit or material claim against or related to the County that will impede or materially affect the County's ability to perform the terms of this Agreement, this Agreement does not conflict with the terms of any other agreement to which the County is a party.

18.3 This Agreement shall be effective upon its execution by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination.

19. NOTICES

19.1 Any notice provided for herein shall be sent to the respective parties at:

KING COUNTY:

POOL OWNERS:

Shelley Marelli, Acting Manager
King County Parks and Recreation Division
Dept. of Natural Resources & Parks
King Street Center, 7th Floor
201 S. Jackson St.
Seattle, WA 98104
(Telephone)

Patrice Thorell
Parks & Recreation Director
Parks & Recreation Director
City of Des Moines
21630 11th Ave. S.
Des Moines WA 98198
(206) 870-6529

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IN WITNESS WHEREOF, the parties have executed this Agreement.

KING COUNTY

MOUNT RAINER POOL OWNERS
("POOL OWNERS")

King County Executive
Manager _____
Date _____

CEO

APPROVED AS TO FORM this _____
day of _____, 2003.

DATED this _____ day of
_____, 2003.

By _____
Richard S. Brown
Assistant City Attorney of Des Moines

CITY OF DES MOINES
By _____
Anthony Piasecki
Its City Manager
At the direction of the Des Moines City
Council by motion regularly passed at an
open public meeting on _____, 2003.

APPROVED AS TO FORM this _____
day of _____, 2003.

DATED this _____ day of
_____, 2003.

By _____
Susan Sampson
City Attorney of Normandy Park

CITY OF NORMANDY PARK
By _____
Merlin MacReynold
Its City Manager
At the direction of the Normandy Park City
Council by motion regularly passed at an
open public meeting on _____, 2003.

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tony Piasecki, to me known to be the person who signed as City Manager of the CITY OF DESMOINES, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Merlin MacReynold, to me known to be the person who signed as City Manager of the CITY OF NORMANDY PARK, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of KING COUNTY, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of the municipal corporation, that _____ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

14809

EXHIBIT B TO EXHIBIT A OF ATTACHMENT A

[Insert AMG Pool Operation Agreement]

14809

Highline Pool No. 1 #1043

EXHIBIT B to Attachment A

DC0165

LEASE AGREEMENT

THIS LEASE is made in quadruplicate to be effective as of the 6th day of March, 1974 by and between KING COUNTY, WASHINGTON, a legal subdivision of the State of Washington, hereinafter called the Lessee, and HIGHLINE SCHOOL DISTRICT NO. 401, KING COUNTY, WASHINGTON, a municipal corporation of the State of Washington and a school district of the first class, hereinafter called the Lessor.

RECITALS

A. This is a lease of a parcel of land, the property of Lessor, which in the opinion of the parties should be used as proposed by Lessee for the immediate construction of an indoor swimming pool. The Lessee has determined that this particular location and setting near a public high school operated by the Lessor is well-suited for development as the site of its pool.

B. In furtherance of plans for the construction of the new facility, it is agreed that the Lessor also shall grant to the Lessee an easement for the installation and maintenance of drainage and utility services necessary for the operation of the swimming pool.

C. The Lessor and Lessee agree that the leased premises shall be developed in a manner insuring the compatibility of the pool with the other facilities and activities in the vicinity, enhancing the recreational and educational utility of such premises and the adjacent area. The parties intend that the pool will be an attractive and desirable addition to the site, and agree that throughout the term of this lease and any extension thereof, when not being used by the Lessee, the pool will be available for use by the Lessor in accordance with a separate written Use Agreement to be entered into by the parties.

DC0165

W I T N E S S E T H:1. Consideration, Demise of Premises and Grant of Easement.

NOW, THEREFORE, in consideration of the covenants, terms and conditions hereinafter set forth, and the mutual benefits to be derived, the Lessor does by these presents lease and demise unto the Lessee, and the Lessee does hereby lease from the Lessor, for a term of forty (40) years from the date first above written, that certain real estate hereinafter called the premises, situated in King County, State of Washington, and described as follows:

That portion of the Northwest 1/4 of Section 16, Township 22 North, Range 4 East, W.M., described as follows:

Beginning at the Northwest corner of Lot 1, Block 6, Thunderbird Estates Division No. 3, as recorded in Volume 57 of Plats on pages 37 and 38, Records of King County, Washington; thence North 1°11'48" East along the East margin of 19th Avenue South 292.68 feet; thence South 88°03'32" East parallel with the North line of said Block 6; 315.35 feet; thence South 1°11'48" West 292.68 feet; thence North 88°03'32" West along the North line of said Block 6, 315.35 feet to the point of beginning;

TOGETHER WITH an easement consisting of a strip of land ten (10) feet in width for drainage and utilities, hereinafter called the easement, over, under and across the following described tract of land, also situated in King County, State of Washington:

BEGINNING at the Northeast corner of Lot 3, Block 6, Thunderbird Estates Division No. 3 as recorded in Volume 57 of Plats on pages 37 and 38, Records of King County, Washington; thence South 88°03'32" East 16.02 feet; thence South 1°15'14" West parallel with the East line of said Lot 3 to the Northerly margin of South 229th Street; thence Westerly along said margin to the Southeast corner of said Lot 3; thence North 1°11'14" East 110.71 feet to the point of beginning.

2. Use of Premises and Easement. The premises shall be used for the construction thereon by the Lessee of the planned indoor swimming pool and the foundations and footings therefor, and for the operation, maintenance, repair and utilization of such pool as a part of its recreational program. The premises

and improvements also may be used by the Lessor throughout the term of this lease and any extension thereof, when not being used by the Lessee, pursuant to a Use Agreement to be entered into by the parties before the pool is opened. While the Lessee always shall be assured a reasonable opportunity to use the pool, the terms, conditions and obligations for such use shall be contained in the Use Agreement. The easement shall be used only for the installation and maintenance by Lessee of drainage and utility services necessary for the operation of the swimming pool.

3. Expenses and Improvements. The Lessee shall timely pay all expenses and charges in connection with its use and occupancy of the leased premises and easement and improvements thereon which it shall operate regularly and keep in good condition and repair, including construction expenses, maintenance, repair, rehabilitation and operating costs, governmental charges or taxes, and utility charges, and the Lessee shall hold the Lessor harmless with respect to all such expenses and charges.

4. Construction of the Improvements. The contemplated swimming pool and utility services shall be constructed and installed by the Lessee at its sole cost and expense. It is agreed that construction of the improvements shall begin as soon as possible and in any event within one year of the effective date of this lease, and it is further agreed that such construction shall be completed within a reasonable time after the commencement of work, delays occasioned by fire, earthquake, acts of God, war or civil disturbance, demonstrations, labor disputes, fuel or material shortages of any kind, or resulting from litigation directly affecting the project being excepted. All construction and installation shall be accomplished in a

safe, competent and workmanlike manner, and the Lessee shall provide upon completion for the proper landscaping or prompt restoration to its original condition, respectively, of the premises and easement adjacent to such work.

5. Non-liability of Lessor. The Lessor shall not be liable for any injury to persons or property upon the leased premises or easement from any cause whatever, except as may otherwise be expressly provided in the Use Agreement to be entered into by the parties, and the Lessee shall save the Lessor free and harmless from any and all claims arising out of the use and occupancy of the premises and easement. At its sole cost and expense, the Lessee shall keep the leased premises and easement and the improvements thereon continuously insured throughout the term of this lease and any extension thereof against claims for bodily injury or property damage under a policy or policies of general public liability insurance which shall be promptly made available to Lessor for inspection upon request. The limits of such insurance shall be not less than \$100,000 for bodily injury sustained by any one person and \$300,000 for bodily injury to more than one person in a single occurrence, and \$100,000 for damage to or destruction of the property of others, including the loss of use thereof. In addition, and prior to the commencement of any construction, Lessee or its contractor will secure public liability and property damage insurance protecting Lessor against all claims incident to the construction of the pool and utility services with limits of not less than \$1,000,000.00. The Lessee hereby warrants to Lessor that the project will be completed and paid for free and clear of all liens.

6. Assignment or Use by Third Parties. The Lessee shall not assign or transfer this lease or easement, nor sublet any part of the leased premises or easement or improvements thereon, without the prior written approval of the Lessor, which it may in its discretion decline to grant. This lease and easement shall not be assigned by operation of law. Agreements for the use of the pool facilities, at times when they are not being used by the Lessee or desired by the Lessor, may be entered into between Lessee and third parties, but no such use agreement shall relieve Lessee from its duty of maintenance, care and control of the premises, or from any of its undertakings to hold harmless the Lessor, as provided in this lease.

7. Default. Time is of the essence of this lease agreement which may be terminated upon default in the following manner. At any time after the occurrence of a default or defaults under this lease (including failure to commence construction of, or complete, the swimming pool and utility services in accordance with paragraph 4 hereof), and while any such default remains unremedied, Lessor shall have the option to give notice in writing to the Lessee of its intention to terminate this lease, specifying the default or defaults then outstanding. At any time after the expiration of thirty (30) days from the giving of such notice in the case of any default, except a default in connection with the commencement or completion of construction referred to in paragraph 4 above, the Lessor shall have the right, if one or more defaults described in such notice then remain unremedied, to terminate this lease effective immediately upon giving written notification of termination to the Lessee. With respect to any event of default under paragraph 4 which is not susceptible of being cured within thirty (30) days from the giving of notice of

default, the time within which such default may be cured shall be extended, and the option of Lessor to terminate this lease postponed, for such period of time as shall be reasonably necessary for the curing of the same if efforts to cure the default are in progress, or have been commenced, prior to the expiration of the thirty (30) day period and are diligently prosecuted until such default is fully cured.

8. Waiver. The failure of the Lessor to insist upon strict performance of any of the covenants and agreements of this lease shall not be construed as a waiver of the right to insist upon strict performance of such covenants and agreements in the future, nor shall it be construed as a waiver of the right to insist upon strict performance of any other covenants or agreements of the Lessee.

9. Renewal Option. The Lessee shall have and is hereby granted an option to renew this lease for an extended term of ten (10) years, by written notice of renewal to the Lessor at least one hundred and eighty (180) days prior to the termination of the initial term hereof. Such extended term shall be subject to the same terms, conditions and covenants as are contained herein.

10. Rights Upon Termination. Upon the termination of this lease, or in the event that there be an extended term hereof at the termination of such extended term, all improvements then existing and affixed to the leased premises and easement shall become the property of the Lessor, free and clear of any interest of the Lessee, and Lessee shall promptly relinquish possession of the leased premises and use of the easement, leaving all improvements affixed thereto.

11. Eminent Domain.

(a) Notice of Proceedings. Upon the commencement of a proceeding to condemn or take by eminent domain the whole or any part of the premises or easement or any building or improvement situated wholly or partly on either, or to condemn or take any right of entry or access to or from the premises or easement, or any other right, interest, tenement, hereditament or appurtenance in any way belonging or appertaining thereto (hereinafter called "the proceeding"), or upon the commencement of negotiations in anticipation of the proceeding, the Lessee shall promptly notify Lessor, and the Lessor shall promptly notify Lessee, such written notices to contain a general description of the proceeding or negotiation and a description of the property or rights to property sought to be taken. The Lessor and Lessee may each appear in the proceeding or take part in negotiations as the case may be and therein contest the taking of the premises or the easement or prosecute any claim for taking of the premises or easement, but the award or payment attributable to the interest of the Lessor or Lessee in either the premises or the easement shall be subject to the terms of this lease. Throughout this Section 11 reference to the premises and the easement shall include and refer to the improvements thereon and the underlying land and any access or other rights or interests therein.

(b) Entire Taking. If the entire premises and easement are condemned or taken by the proceeding or conveyed in anticipation thereof, this lease shall be terminated effective on the date title is vested in the public or other authority bringing or threatening the proceeding and all obligations of the parties under this lease except those previously accrued

shall be at an end. The one or more awards, payments or compensations for the rights and estates of Lessor and of Lessee in the premises when received shall be divided and apportioned between them, to the extent that such apportionment shall not be made in the proceeding, on the basis of the then value of their respective interests in the premises and easement and improvements thereon as of the date of termination heretofore specified. The Lessee shall have no entitlement to any awards, payments or compensations made to Lessor.

(c) Partial Taking. If a portion only of the premises or easement is condemned or taken by the proceeding, being "a partial taking," then this lease shall thereby be terminated only as to the portion of the premises or easement taken, provided the Lessee still wishes to use the remainder of the premises, easement and improvements thereon for the purposes and in the manner authorized herein and notifies the Lessor in writing of its intention to do so within ninety (90) days after title vests in the condemnor as a result of the partial taking. In the absence of such written notice this lease will terminate at the expiration of that ninety (90) day period. The awards, payments or compensations received in connection with any partial taking shall be divided and apportioned in the manner herein prescribed with respect to an entire taking. Reconstruction or rebuilding undertaken by Lessee in its discretion following a partial taking shall be only for the purposes authorized herein and shall be promptly accomplished subject to all the terms and conditions of this lease including those relating to the original construction of the pool and installation of the drainage and utility services.

12. Notices. Whenever notices are given or communicated with respect to this lease, they shall be sent by registered mail addressed to the parties at the following addresses, unless a different address shall have been designated in writing:

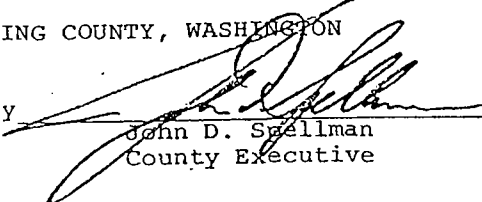
Lessee - Division of Parks
King County
King County Courthouse
Seattle, Washington 98104

Lessor - Superintendent
Highline School District No. 401
15675 Ambaum Boulevard S.W.
Seattle, Washington 98166

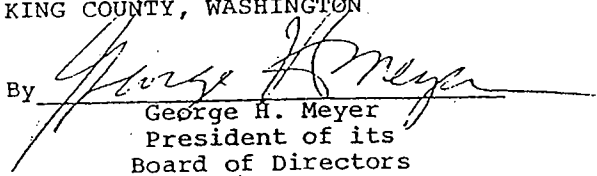
13. Successors and Assigns. This lease shall inure to the benefit of and be binding upon the successors and assigns of the parties.

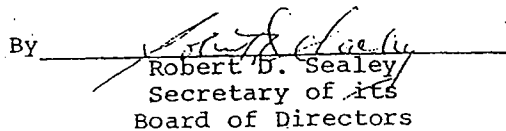
IN WITNESS WHEREOF, the parties have subscribed their names as of the day and year first above written.

KING COUNTY, WASHINGTON

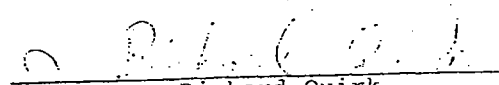
By 
John D. Spellman
County Executive

HIGHLINE SCHOOL DISTRICT NO. 401,
KING COUNTY, WASHINGTON

By 
George H. Meyer
President of its
Board of Directors

By 
Robert D. Sealey
Secretary of its
Board of Directors

APPROVED as to form,
Feb 7, 1974


J. Richard Quirk
Deputy Prosecuting Attorney

14809

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Agreement") is entered into as of the 1st day of January 2004, by and between KING COUNTY, a political subdivision of the State of Washington (the "County"), MOUNT RAINIER POOL OWNERS, a coalition of the CITIES OF DESMOINES and NORMANDY PARK, both Washington municipal corporations ("Pool Owners"), and HIGHLINE SCHOOL DISTRICT NO. 401, a Washington municipal corporation (the "District") (collectively referred to herein as the "Parties").

WHEREAS, the County has leased certain real property from the District pursuant to the Lease Agreement dated March 6, 1974 ("Lease"), which is attached and incorporated herein as Exhibit A;

WHEREAS, the County has constructed a facility known as the Mount Rainier Pool ("Pool") on the property leased from the District pursuant to the Lease;

WHEREAS, the County and the Pool Owners have reached an agreement for transfer of ownership of the Pool from the County to the Pool Owners under that certain Pool Transfer Agreement entered into on or about the date hereof and dated as of January 1, 2004 ("Pool Transfer Agreement");

WHEREAS, the Lease should accordingly be assigned to the Pool Owners, and the District approves of such assignment, on the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises made in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Assignment.

The County hereby assigns, transfers and conveys to the City of Des Moines and the City of Normandy Park, as co-owners and operating as the Mount Rainier Pool Owners coalition, all of the County's right, title, and interest in and to the Lease.

2. Assumption.

The Pool Owners hereby accept and assume all of the County's right, title and interest in and to the Lease and assume all obligations of any kind or nature under the Lease that arise after the date of this Agreement. The Pool Owners agree for themselves and their respective successors and assigns, to defend, indemnify, and

hold harmless the County, its appointed and elected officials and employees, from and against any and all claims, liability, damages, demands, suits, judgments, costs, including attorney fees and costs of defense (collectively, "Claims"), to the extent such Claims are caused by or arise out of the Pool Owners' breach or violation of the terms of the Lease or this Agreement. The foregoing notwithstanding, the Pool Owners shall have no obligation to defend, indemnify, or hold harmless the County, or any of its elected officials or employees, for any Claims relating to termination of the Lease after the mothballing or closure of the Pool as permitted under the terms of the Pool Transfer Agreement.

3. Cessation of Pool Owners' Operation of Pool.

3.1 The Pool Owners shall be entitled to close or cease operations of the Pool in the event that it becomes economically imprudent for the Pool Owners to continue to own, maintain and operate the swimming facility located on the premises and the Pool Owners have made all reasonable efforts to keep the Pool open and have complied with all obligations and conditions as set forth in the Pool Transfer Agreement. For purposes of this section, continued operation shall be deemed economically imprudent if the Pool Owners have complied with all obligations and conditions in the Pool Transfer Agreement for certification that the operations of the Pool are not economically viable (including, but not limited to, the requirements in Section 6.1 thereof) and are unable to adequately cover all costs of operating the swimming facility (including, but not limited to, reasonable allowances for overhead costs, reserves for repairs and capital improvements, and costs of insurance) with funds from operating revenues generated by the pool facility, funds from cities (and/or any other governmental or public support source (other than King County), and any grants or donations from foundation or corporate donor resources that may be available to the Pool Owners for support of the facility.

3.2 If the Pool Owners intend to close or cease operating the Pool and convey the Pool back to the County, they shall provide the County and the District with written notice of such decision no less than ninety (90) days before the proposed date of reconveyance, and during such ninety (90) day period the Pool Owners, County and the District shall work together diligently and in good faith to seek to find another entity to assume ownership and/or operation of the Pool in an effort to prevent the Pool from being conveyed back to the County. Following compliance with all obligations and conditions of the Pool Transfer Agreement for transfer of the Pool, the Pool Owners shall convey the Pool free and clear of all liens and encumbrances and in good condition to the County (or to such other entity approved by the District) at the end of the ninety (90) day notice period. If no such other entity is so approved by the District, the Pool Owners shall convey the Pool to

the County in a state ready to be mothballed and shall take all actions necessary to maintain the Pool in such condition until said conveyance.

3.3 Upon conveyance of the Pool to the County pursuant to Section 3.2, the Lease shall terminate and the County shall have no obligation to operate the Pool or make the Pool available to or for the use of the District or others, and shall mothball the Pool in accordance with industry and County standards for a period of six (6) months ("Mothballing Period"). During the Mothballing Period, the County shall continue to secure and maintain the Pool building and associated property and shall carry insurance substantially similar to the insurance currently in place and carried by the County as of the date of this Agreement and consistent with the requirements of the Lease (whether or not the Lease is then in effect), provided, however, that the County may elect to self insure against tort liability arising from the Pool. During the Mothballing Period, the Parties will work together diligently and in good faith to seek to find another third party willing to assume ownership and operation of the Pool.

3.4 Upon the expiration of the Mothballing Period, the Pool's useful life as contemplated by King County Resolution 34571 shall expire. Following the Mothballing Period, the County may permanently close the Pool but shall continue to secure and maintain the Pool building and associated property and shall carry insurance substantially similar to the insurance currently in place and carried by the County as of the date of this Agreement and consistent with the requirements of the Lease (whether or not the Lease is then in effect), provided, however, that the County may elect to self insure against tort liability arising from the Pool.

3.5 At any time after a conveyance of the Pool to the County pursuant to Section 3.2 and prior to March 6, 2009, or at any time after a conveyance of the Pool to the District pursuant to Section 7.1 of the Pool Transfer Agreement and prior to March 6, 2009, the District may by written notice direct the County to demolish the Pool at the County's sole cost and expense. The County shall complete such demolition in a reasonable time, not to exceed one year, following its receipt of the written notice (even if such demolition extends beyond March 6, 2009). As used herein, "demolition" shall include, but not be limited to, the following: demolish the pool building and associated improvements; import fill at pool and foundation; remove sidewalks, underground utilities and asbestos (if any); remove all debris; grade and seed site; construction contract costs, including contractor's fees, construction management fees and general conditions; obtain all necessary permits; design and engineering; and payment of sales taxes and inspection costs.

3.6 All title and ownership to the Pool shall automatically transfer and revert to the District as of March 6, 2009 or upon such earlier date as the Pool is either closed by the

Pool Owners in accordance with Section 7.1 of the Pool Transfer Agreement or the Pool is demolished under Section 3.5 hereof. Upon such transfer to the District, the County shall have no further obligations or responsibilities under this Agreement or the Lease or regarding the Pool (except for the completion of demolition, if so directed by the District under Section 3.5). In such event, the County agrees that the District shall have no obligation to operate the Pool and no obligation to comply with any of the operating restrictions or deed covenants set forth in the Pool Transfer Agreement and any previous documents of record (and the deed to the District shall provide for the termination and release of all such restrictions and deed covenants), nor shall the District have any obligations whatsoever to operate or maintain the Pool or its related facilities and building. It is expressly understood and agreed that the District considers the ability to demolish the Pool or otherwise convert the Pool facility and the underlying property to another use to be a material consideration for its decision to agree to this Agreement, as well as to the release provided to the County in Section 4 of this Agreement.

4. Acceptance.

The District hereby approves and accepts the assignment of the Lease from the County to the Pool Owners pursuant to the terms contained in this Agreement and releases the County from all obligations under the Lease, provided, however, this release shall not constitute a release from liability as to any breach of the Lease by the County that occurred prior to the date of this Agreement or as to any breach of this Agreement by the County, nor shall it constitute a release as to any third party claim related to the County having agreed to an assignment of the Lease or having entered into the Pool Transfer Agreement with the Pool Owners.

5. No Other Amendments.

Except as modified or amended by this Agreement, all of the terms and conditions of the Lease remain unchanged.

6. General Provisions.

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision. In the event any of the Parties defaults on the performance of any terms of this Agreement or any Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. This Agreement shall be governed by the laws of the State of

Washington. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of any Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

7. Pool Use Agreement.

The Parties acknowledge and agree that the County has in the past allowed the District to use the Pool under the terms of a use agreement, and the Pool Owners will continue to do so under the terms of the most recent Pool Use Agreement entered into between the County and the District on June 1, 2003 (the "Pool Use Agreement"). Prior to the expiration of the Pool Use Agreement, the Pool Owners agree to engage in good faith negotiations to facilitate the District's continued use of the Pool during the term of the Lease, as contemplated by Section 2 of the Lease.

8. Notices.

All notices or communications by one of the parties hereto to the other shall be addressed, respectively, as follows:

If to the County:

King County
Shelley Marelli, Acting Manager
King County Parks and Recreation Division
King Street Center, 7th Floor
201 S. Jackson Street
Seattle, WA 98104

If to the District:

Dr. Joseph McGeehan
Superintendent
Highline School District No. 401
15675 Ambaum Blvd. S.W.
P.O. Box 66100
Seattle, WA 98166

If to the City of Des Moines:

Patrice Thorell
Director of Parks & Recreation
21630 11th Avenue South
Des Moines, WA
98198

14809

If to the City of Normandy Park: City Manager
801 SW 174th St.
Normandy Park, WA
98166

Any party may change its address for notice as set forth above by giving written notice of a different address (or addresses) to each of the other parties in the manner specified in this Section 8. Except as otherwise expressly provided, any notice shall be deemed to have been given (a) three (3) business days after the mailing thereof when mailed by registered or certified mail (return receipt requested), (b) the next business day after delivery to any overnight courier service offering proof of receipt, (c) upon receipt if sent by facsimile (with copy by registered or certified mail, return receipt requested), or (d) upon receipt if by hand delivery.

The Pool Owners agree that a copy of any notice or other communication sent to the County pursuant to this Agreement or the Pool Transfer Agreement shall be sent simultaneously to the District.

9. Joint and Several Liability.

The City of Des Moines and the City of Normandy Park shall be jointly and severally liable for the obligations of the Pool Owners under this Agreement.

10. Counterparts.

This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

EXECUTED and APPROVED by the Parties in identical counterparts of this Agreement, each of which shall be deemed an original hereof, on the dates set forth below.

14809

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

CITY OF DESMOINES

By _____
Richard S. Brown
Assistant City Attorney of Des Moines

By _____
Tony Piasecki
Its City Manager
At the direction of the Des Moines City
Council by motion regularly passed at an
open public meeting on _____,
2003.

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

CITY OF NORMANDY PARK

By _____
Susan Sampson
City Attorney of Normandy Park

By _____
Merlin MacReynold
Its City Manager
At the direction of the Normandy Park
Council by motion regularly passed at an
open public meeting on _____,
2003.

14809

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

HIGHLINE SCHOOL DISTRICT NO. 401

By _____
William L. Green
Attorney for Highline School District

By _____
Dr. Joseph McGeehan
Its Superintendent
At the direction of the Highline School
Board by resolution regularly passed at an
open public meeting on _____,
2003.

APPROVED AS TO FORM this
_____ day of _____, 2003.

DATED this _____ day of _____,
2003.

KING COUNTY

By _____
Name: _____
King County Prosecuting Attorney

By _____
Name: _____
Its: _____
At the direction of the King County Council
by _____ regularly passed at an open
public meeting on _____, 2003.

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tony Piasecki, to me known to be the person who signed as City Manager of the CITY OF DESMOINES, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Merlin MacReynold, to me known to be the person who signed as City Manager of the CITY OF NORMANDY PARK, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Dr. Joseph McGeehan, to me known to be the person who signed as Superintendent of HIGHLINE SCHOOL DISTRICT NO. 401, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

14809

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person who signed as _____ of KING COUNTY, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that _____ was duly elected, qualified and acting as said officer of the municipal corporation, that _____ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

Legal Description of Mt. Rainier Pool Property

14809

That portion of the Northwest $\frac{1}{4}$ of Section 16, Township 22 North, Range 4 East, W.M., described as follows:

Beginning at the Northwest corner of Lot 1, Block 6, Thunderbird Estates Division No. 3, as recorded in Volume 57 of Plats on pages 37 and 38, Records of King County, Washington; then North $1^{\circ} 11' 48''$ East along the East margin of 19th Avenue South 292.68 feet; then South $88^{\circ} 03' 32''$ East parallel with the North line of said Block 6, 315.35 feet to the point of beginning;

TOGETHER WITH an easement consisting of a strip of land ten (10) feet in width for drainage and utilities, hereinafter called the easement, over, under and across the following described tract of land, also situated in King County, State of Washington:

BEGINNING at the Northwest corner of Lot 1, Block 6, Thunderbird Estates Division No. 3, as recorded in Volume 57 of Plats on pages 37 and 38, Records of King County, Washington; then South $88^{\circ} 03' 32''$ East 16.02 feet; thence South $1^{\circ} 15' 14''$ West parallel with the East line of said Lot 3 to the Northerly margin of South 229th Street; then Westerly along said margin to the Southeast corner of said Lot 3; then North $1^{\circ} 11' 14''$ East 110.71 feet to the point of beginning.

Inventory of Equipment and Supplies

14809

Inventory will be prepared and inserted following King County Council action, but prior to execution of this Agreement.